

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 91

**Citations Affected:** IC 4-21.5-2-5; IC 31-9-2; IC 31-16-15-2.5; IC 31-25; IC 31-28-5.

**Synopsis:** Foster care sibling visitation, paternity, and child support. Conference committee report for ESB 91. Requires the department of child services (DCS) to promote sibling visitation for every child who receives foster care. Allows a sibling or certain other individuals to request sibling visitation if one of the siblings is receiving foster care. Requires DCS to allow sibling visitation if it is in the best interest of the child receiving foster care. Provides that if DCS denies a request for sibling visitation, the child's guardian ad litem or court appointed special advocate may petition a juvenile court for sibling visitation. Requires a court to grant sibling visitation if the court determines sibling visitation is in the best interest of the child who receives foster care. Requires DCS to: (1) implement a pilot program for establishing and enforcing paternity and child support; (2) select counties to participate in the program; (3) select a county that shall not participate in the program; and (4) select a county that shall, after December 31, 2008, continue to administer the child support laws in the same manner in which the county administered the child support laws before January 1, 2009. Requires DCS to submit a report to the child custody and support advisory committee before January 1, 2011, that includes the results of the pilot program and findings and recommendations concerning the performance measure comparison between the counties participating in the pilot program and the county selected to administer child support laws in the same manner as before January 1, 2009. Requires DCS to: (1) employ administrative law judges (ALJ); (2) serve notice of financial responsibility to an obligee and obligor concerning a child support obligation; (3) schedule a negotiation conference between the parties not more than 30 days after DCS issues the notice; and (4) reschedule a negotiation conference. Requires an obligor and obligee to appear for or reschedule the negotiation conference. Requires DCS to issue: (1) an order of child support if the parties stipulate to an agreement; (2) an order for genetic testing if the parties do not agree and the obligor contests paternity; (3) a temporary order of child support and request for an administrative hearing if the parties do not agree and there is an executed paternity affidavit or the results of a genetic test indicate at least a 99% probability that a man is the child's biological father; (4) a default order of child support if the obligor fails to appear for or reschedule a negotiation conference and there is an executed paternity affidavit or the results of a genetic test indicate at least a 99% probability that a man is the child's biological father; and (5) a default order of paternity and child support

if the obligor fails to meet certain requirements. Allows: (1) DCS to dismiss an action if the results of a genetic test do not indicate at least a 99% probability that a man is the child's biological father; and (2) DCS, an obligor, or an obligee to request an administrative hearing if DCS issues a default order. Requires an ALJ to: (1) determine the matter of paternity and child support de novo; and (2) include written findings and conclusions in the ALJ's order. Requires DCS and an ALJ to determine a child support obligation by applying the child support guidelines. Allows: (1) an obligor or obligee to file a written request with DCS for the review and adjustment of a child support order; and (2) a party to seek judicial review of an ALJ's order. Provides that a nonresident obligee is not required to appear at a negotiation conference or an administrative hearing. Requires: (1) DCS to file orders and other documents with the clerk of a court; and (2) the clerk to stamp the date of receipt on a copy of an order and assign a cause number. Provides that: (1) an ALJ is subject to the rules adopted by DCS; (2) an order filed by DCS with the court has all the force, effect, and remedies of an order of the court; and (3) if a genetic test is requested after the execution of a paternity affidavit, the court shall order the test to be paid out of the county general fund or by the party who requested the test. Provides that if the parties stipulate to an agreement of a child support obligation at the negotiation conference, DCS: (1) shall issue an order of child support and establish parenting time; and (2) may include an order of custody if the parties agree. Makes technical changes. (The introduced version of this bill was prepared by the interim study committee on missing children.) **(This conference committee report adds language from the Senate passed version of SB 105 (as reprinted January 29, 2008), except that this conference committee report requires DCS to select a county that: (1) shall not participate in the pilot program; and (2) shall, after December 31, 2008, continue to administer the child support laws in the same manner in which the county administered the child support laws before January 1, 2009. This conference committee report also allows DCS to provide additional funding to the county selected and requires DCS and the prosecuting attorneys council of Indiana to submit a report to the child custody and support advisory committee before January 1, 2011, that includes the results of the pilot program and findings and recommendations concerning the performance measure comparison between the counties participating in the pilot program and the county selected to administer child support laws in the same manner as before January 1, 2009. This conference committee report also: (1) requires DCS and the prosecuting attorneys council of Indiana to jointly develop criteria for the selection of counties; and (2) allows parties to opt out of a negotiation conference and request an obligor's child support obligation be determined by a court.)**

**Effective:** Upon passage; July 1, 2008; January 1, 2009.

## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 91 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-21.5-2-5, AS AMENDED BY P.L.1-2007,
- 3 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2009]: Sec. 5. This article does not apply to the
- 5 following agency actions:
- 6 (1) The issuance of a warrant or jeopardy warrant for the
- 7 collection of taxes.
- 8 (2) A determination of probable cause or no probable cause by the
- 9 civil rights commission.
- 10 (3) A determination in a factfinding conference of the civil rights
- 11 commission.
- 12 (4) A personnel action, except review of a personnel action by the
- 13 state employees appeals commission under IC 4-15-2 or a
- 14 personnel action that is not covered by IC 4-15-2 but may be
- 15 taken only for cause.
- 16 (5) A resolution, directive, or other action of any agency that
- 17 relates solely to the internal policy, organization, or procedure of
- 18 that agency or another agency and is not a licensing or
- 19 enforcement action. Actions to which this exemption applies
- 20 include the statutory obligations of an agency to approve or ratify
- 21 an action of another agency.
- 22 (6) An agency action related to an offender within the jurisdiction

of the department of correction.

(7) A decision of the Indiana economic development corporation, the office of tourism development, the department of environmental management, the tourist information and grant fund review committee (before the repeal of the statute that created the tourist information and grant fund review committee), the Indiana finance authority, the corporation for innovation development, or the lieutenant governor that concerns a grant, loan, bond, tax incentive, or financial guarantee.

(8) A decision to issue or not issue a complaint, summons, or similar accusation.

(9) A decision to initiate or not initiate an inspection, investigation, or other similar inquiry that will be conducted by the agency, another agency, a political subdivision, including a prosecuting attorney, a court, or another person.

(10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.

(11) The acquisition, leasing, or disposition of property or procurement of goods or services by contract.

(12) Determinations of the department of workforce development under IC 22-4-18-1(g)(1) or IC 22-4-41.

(13) A decision under IC 9-30-12 of the bureau of motor vehicles to suspend or revoke a driver's license, a driver's permit, a vehicle title, or a vehicle registration of an individual who presents a dishonored check.

(14) An action of the department of financial institutions under IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

(15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.

(16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.

(17) A determination of status as a member of or participant in an environmental performance based program developed and implemented under IC 13-27-8.

**(18) A proceeding to establish paternity or child support by the department of child services or an administrative law judge under IC 31-25-5.**

SECTION 2. IC 31-9-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 1.5. "Administrative law judge", for purposes of IC 31-25-5, means a person employed by the department of child services under IC 31-25-2-21.**

SECTION 3. IC 31-9-2-17.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 17.7. "Child support", for purposes of IC 31-25-5, includes child support, child support arrearage, foster care maintenance, medical support, interest on child support arrearage, and other reasonable support for a child.**

SECTION 4. IC 31-9-2-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 18. "Child support guidelines", for purposes of IC 31-14-11-8, ~~and~~ IC 31-16-8-1, **and IC 31-25-5**, refers to the guidelines adopted by the Indiana supreme court.

SECTION 5. IC 31-9-2-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. "Court appointed special advocate", for purposes of IC 31-15-6, IC 31-17-6, IC 31-19-16, IC 31-19-16.5, **IC 31-28-5**, and the juvenile law, means a community volunteer who:

- (1) has completed a training program approved by the court;
- (2) has been appointed by a court to represent and protect the best interests of a child; and
- (3) may research, examine, advocate, facilitate, and monitor a child's situation.

SECTION 6. IC 31-9-2-50 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 50. "Guardian ad litem", for purposes of IC 31-15-6, IC 31-16-3, IC 31-19-16, IC 31-19-16.5, **IC 31-28-5**, and the juvenile law, means an attorney, a volunteer, or an employee of a county program designated under IC 33-24-6-4 who is appointed by a court to:

- (1) represent and protect the best interests of a child; and
  - (2) provide the child with services requested by the court, including:
    - (A) researching;
    - (B) examining;
    - (C) advocating;
    - (D) facilitating; and
    - (E) monitoring;
- the child's situation.

A guardian ad litem who is not an attorney must complete the same court approved training program that is required for a court appointed special advocate under section 28 of this chapter.

SECTION 7. IC 31-9-2-82.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 82.5. "Negotiation conference", for purposes of IC 31-25-5, means a meeting between parties to discuss and determine paternity and a child support obligation of an obligor (as defined in IC 31-25-4-4).**

SECTION 8. IC 31-9-2-85, AS AMENDED BY P.L.103-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 85. (a) "Obligee", for purposes of IC 31-16-15 and IC 31-16-16, means a person who is entitled to receive a payment under a support order.

(b) "Obligee" or "petitioner", for purposes of the Uniform Interstate Family Support Act under IC 31-18, has the meaning set forth in IC 31-18-1-14.

- (c) **"Obligee", for purposes of IC 31-25-5, means a person who:**
- (1) is entitled to receive payment under a support order (as defined in section 125(a) of this chapter); or**
  - (2) has sought services from a Title IV-D agency.**

SECTION 9. IC 31-9-2-86, AS AMENDED BY P.L.145-2006, SECTION 203, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 86. (a) "Obligor", for purposes of IC 31-16-15 and IC 31-16-16, means an individual who has been ordered by a court to pay child support.

(b) "Obligor" or "respondent", for purposes of the Uniform Interstate Family Support Act under IC 31-18, has the meaning set forth in IC 31-18-1-15.

(c) "Obligor", for purposes of IC 31-25-4 **and IC 31-25-5**, has the meaning set forth in IC 31-25-4-4.

SECTION 10. IC 31-9-2-117.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 117.3. "Sibling", for purposes of IC 31-28-5, means a brother or sister by blood, half-blood, or adoption.**

SECTION 11. IC 31-16-15-2.5, AS ADDED BY P.L.103-2007, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2.5. (a) If, in a Title IV-D case, an income withholding order has not been issued with a support order under section 0.5 of this chapter **or the department of child services or an administrative law judge issues an order of support under IC 31-25-5**, a Title IV-D agency may:

- (1) issue an income withholding order with the support order; and
- (2) after providing notice under section 3.5 of this chapter, implement the income withholding order unless the court:
  - (A) stays the implementation of the income withholding order under section 0.5(c) of this chapter; and
  - (B) provides a written finding of the stay in the support order.

(b) In a Title IV-D case in which the implementation of an income withholding order was stayed under section 0.5(c) of this chapter, the Title IV-D agency may:

- (1) after providing notice under section 3.5 of this chapter, lift the stay if the obligor's child support and arrearage payments are delinquent; or
  - (2) lift the stay if the obligor requests implementation of the income withholding order.
- (c) In a Title IV-D case, if:
- (1) an income withholding order was stayed under section 0.5(c) of this chapter; and
  - (2) an obligor requests the implementation of the income withholding order;

the Title IV-D agency is not required to give notice under section 3.5 of this chapter before implementing the income withholding order.

(d) An income withholding order issued under subsection (a):

- (1) has the same force and effect; and
- (2) is enforceable in the same manner;

as an income withholding order issued by a court.

(e) The total amount required to be withheld under an income withholding order implemented under this section is the sum of:

- (1) the obligor's current child support obligation; plus
- (2) the amount of arrearage payment ordered by the court; plus

- (3) an additional amount as determined under subsection (f) for:
- (A) any arrearage that has not been adjudicated, if no arrearage has been adjudicated previously; or
  - (B) any additional arrearage that:
    - (i) has not been adjudicated; and
    - (ii) accrues since the last adjudication of arrearage by the court.

(f) If an obligor subject to an income withholding order is in arrears, unless otherwise ordered by a court, the Title IV-D agency or its agent may increase the weekly amount withheld as follows:

- (1) If the arrearages are at least five hundred dollars (\$500) and less than three thousand dollars (\$3,000), an additional amount of up to twenty dollars (\$20).
- (2) If the arrearages are at least three thousand dollars (\$3,000) and less than five thousand dollars (\$5,000), an additional amount of up to twenty-five dollars (\$25).
- (3) If the arrearages are at least five thousand dollars (\$5,000) and less than ten thousand dollars (\$10,000), an additional amount of up to thirty dollars (\$30).
- (4) If the arrearages are at least ten thousand dollars (\$10,000) and less than fifteen thousand dollars (\$15,000), an additional amount of up to thirty-five dollars (\$35).
- (5) If the arrearages are at least fifteen thousand dollars (\$15,000) and less than twenty thousand dollars (\$20,000), an additional amount of up to forty dollars (\$40).
- (6) If the arrearages are at least twenty thousand dollars (\$20,000) and less than twenty-five thousand dollars (\$25,000), an additional amount of up to forty-five dollars (\$45).
- (7) If the arrearages are at least twenty-five thousand dollars (\$25,000), an additional amount of up to fifty dollars (\$50).

(g) A court is not bound by and is not required to consider the additional amounts described in subsection (f) when ordering, modifying, or enforcing periodic payments of child support.

SECTION 12. IC 31-25-2-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 21. (a) The department shall employ a sufficient number of administrative law judges to hear and decide cases under IC 31-25-5.**

**(b) An administrative law judge employed by the department is subject to rules adopted by the department under IC 4-22-2. IC 4-21.5 does not apply to a proceeding by an administrative law judge under IC 31-25-5.**

**(c) An administrative law judge employed under this section must be an attorney licensed in Indiana.**

SECTION 13. IC 31-25-4-17, AS AMENDED BY P.L.103-2007, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 17. (a) The bureau shall do the following:**

- (1) Collect support payments when the payments have been assigned to the state by the application for assistance under Title IV-A.
- (2) Assist in obtaining **or establishing** a support order, including

an order for health insurance coverage under:

(A) IC 27-8-23;

(B) IC 31-14-11-3; or

(C) IC 31-16-6-4;

when there is no existing order and assistance is sought.

(3) Assist mothers of children born out of wedlock in establishing paternity and obtaining a support order, including an order for health insurance coverage under IC 27-8-23, when the mother has applied for assistance.

(4) Implement income withholding in any Title IV-D case:

(A) with an arrearage; and

(B) without an order issued by a court or an administrative agency.

(5) Enforce intrastate and interstate support orders using high volume automated enforcement features.

(6) Use a simplified procedure for the review and adjustment of support orders as set forth in 42 U.S.C. 666(a)(10).

(b) Whenever the bureau collects support payments on behalf of an individual who is no longer a member of a household that receives Title IV-A cash payments, the collected support payments (except collections made through a federal tax refund offset) shall be promptly distributed in the following order:

(1) Payment to the recipient of the court ordered support obligation for the month that the support payment is received.

(2) Payment to the recipient of the support payment arrearages that have accrued during any period when the recipient was not a member of a household receiving Title IV-A assistance.

(3) Payment to the state in an amount not to exceed the lesser of:

(A) the total amount of past public assistance paid to the recipient's family; or

(B) the amount assigned to the state by the recipient under IC 12-14-7-1.

(4) Payment of support payment arrearages owed to the recipient.

(5) Payment of any other support payments payable to the recipient.

(c) Whenever the bureau receives a payment through a federal tax refund offset on behalf of an individual who has received or is receiving Title IV-A assistance, the child support payment shall be distributed as follows:

(1) To the state, an amount not to exceed the lesser of:

(A) the total amount of past public assistance paid to the individual's family; or

(B) the amount assigned to the state by the individual under IC 12-14-7-1.

(2) To the individual, any amounts remaining after the distribution under subdivision (1).

(d) Except as provided in section 19.5 of this chapter, whenever the bureau collects a child support payment from any source on behalf of an individual who has never received Title IV-A assistance, the bureau shall forward all money collected to the individual.

(e) Whenever the bureau receives a child support payment on behalf



of an individual who currently receives a Title IV-A cash payment or an individual whose cash payment was recouped, the child support payment shall be distributed as follows:

(1) To the state, an amount not to exceed the lesser of:

(A) the total amount of past public assistance paid to the individual's family; or

(B) the amount assigned to the state by the individual under IC 12-14-7-1.

(2) To the individual, any amounts remaining after the distribution under subdivision (1).

(f) Unless otherwise required by federal law, not more than seventy-five (75) days after a written request by a recipient, the bureau shall provide an accounting report to the recipient that identifies the bureau's claim to a child support payment or arrearage.

(g) The bureau, the department of child services, and the department of state revenue may not charge a custodial parent a fee to seek or receive a payment through a federal tax refund offset as described in subsection (c).

SECTION 14. IC 31-25-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

**Chapter 5. Establishment of Paternity and Child Support**

**Sec. 1. (a) The department shall implement this chapter as a pilot program.**

**(b) This chapter applies only to counties selected as participants in the pilot program by the department.**

**(c) The department shall select one (1) county that shall not participate in the pilot program established under this chapter. After December 31, 2008:**

**(1) the county selected under this subsection shall administer the child support laws in the same manner in which the county administered the child support laws before January 1, 2009; and**

**(2) the department may provide additional funding to the county selected under this subsection as determined necessary by the department in order to increase child support collection efforts in the county.**

**(d) The department and the prosecuting attorneys council of Indiana shall jointly develop criteria for the selection of counties under subsections (b) and (c). The criteria shall be designed to choose, to the extent reasonably possible, equivalent counties by measurement of existing caseloads for each caseworker and judicial time available for consideration of paternity and child support matters.**

**Sec. 2. (a) The department shall serve a notice of financial responsibility to an:**

**(1) obligee; and**

**(2) obligor who:**

**(A) owes child support under an existing child support order;**

**(B) is responsible for the support of a child; or**

- 1 (C) is an alleged biological parent.
- 2 (b) The notice under subsection (a) must include the following
- 3 information:
- 4 (1) A statement that:
  - 5 (A) the obligor is required to appear at the date, time, and
  - 6 location stated in the notice for a negotiation conference to
  - 7 determine the obligor's child support obligation; and
  - 8 (B) at the negotiation conference, a party may opt out of
  - 9 the negotiation conference and request that an obligor's
  - 10 child support obligation be determined by a court.
- 11 (2) A statement that in the absence of an executed paternity
- 12 affidavit, the obligor may request a genetic test and that if a
- 13 genetic test is not:
  - 14 (A) obtained before the legal establishment of paternity;
  - 15 and
  - 16 (B) submitted into evidence before the entry of the final
  - 17 order establishing paternity;
  - 18 a genetic test may not be allowed into evidence at a later date.
- 19 (3) A statement that the department will issue a default order
- 20 as described under section 7(a) of this chapter if:
  - 21 (A) the obligor fails to:
    - 22 (i) appear for the negotiation conference; or
    - 23 (ii) reschedule the negotiation conference before the date
    - 24 stated in the notice; and
  - 25 (B) one (1) or both of the following apply:
    - 26 (i) The obligor executed a paternity affidavit.
    - 27 (ii) The results of the genetic test indicate at least a
    - 28 ninety-nine percent (99%) probability that the man is
    - 29 the child's biological father.
- 30 (4) A statement that the department shall issue a default order
- 31 as described under section 7(b) of this chapter if:
  - 32 (A) the obligor fails to:
    - 33 (i) appear for the negotiation conference; or
    - 34 (ii) reschedule the negotiation conference before the date
    - 35 stated in the notice; or
  - 36 (B) unless a party opts out of the negotiation conference,
  - 37 the obligor fails to:
    - 38 (i) submit to a genetic test as ordered by the department;
    - 39 or
    - 40 (ii) appear for an appointment to submit to a genetic test
    - 41 without good cause.
- 42 (5) A statement that a default order will be filed with the clerk
- 43 of the court as described under section 15 of this chapter and
- 44 that after the default order is filed with the clerk of the court,
- 45 the default order has all the force, effect, and remedies of an
- 46 order of the court.
- 47 (6) The following:
  - 48 (A) The name of the obligee.
  - 49 (B) The name and birth date of the child for whom support
  - 50 is being sought.
- 51 (7) A statement that the department will apply the child

support guidelines to determine the obligor's weekly child support obligation.

(8) A statement that in calculating the amount of the obligor's weekly child support obligation under the child support guidelines, the department will calculate the weekly child support obligation using the parties' income information and that in the absence of income information, the department may calculate the obligor's weekly child support obligation using the current minimum wage for a forty (40) hour work week.

(9) A statement that the department may issue an administrative subpoena to obtain:

(A) income information; and

(B) other information relevant for establishing and enforcing a child support obligation.

(10) A statement that the department may enter a temporary order requiring the obligor to pay child support in an amount established by applying the child support guidelines.

(11) If applicable, a statement of the amount of arrears that has accrued under an order for child support.

(12) A statement that fees and costs associated with the collection of child support may be assessed against and collected from the obligor.

(13) If applicable, a statement that foster care maintenance may be collected against the obligor.

(14) The interest that may be applied on late child support payments.

(15) A statement that the obligor may assert one (1) or more of the following objections in the negotiation conference, and that if an objection is not resolved, the department will schedule an administrative hearing on the matter:

(A) The obligor is not the parent of the dependent child.

(B) The dependent child has been adopted by a person other than the obligor.

(C) The dependent child is emancipated.

(D) There is an existing order of child support that establishes the obligor's weekly child support obligation.

(16) A statement that medical support will be established in accordance with IC 31-16-6-4.

(17) A statement that the department may review and adjust an order for child support in accordance with the:

(A) child support guidelines; and

(B) state laws.

(18) A statement that the obligor is responsible for notifying the department of a change in the obligor's address or employment not later than fifteen (15) days after the date of the change.

(19) Instructions on contacting the department if the obligor has any questions.

(20) A statement that the obligor has the right to:

(A) consult with an attorney; and

- 1           **(B) be represented by an attorney at the negotiation**  
 2           **conference.**
- 3           **(21) Other information necessary as determined by the**  
 4           **department.**
- 5           **(c) The department shall serve a notice of financial**  
 6           **responsibility under this section to the obligor and obligee in the**  
 7           **same manner as prescribed under Rule 4.1 of the Indiana Rules of**  
 8           **Trial Procedure.**
- 9           **Sec. 3. (a) The department shall schedule a negotiation**  
 10           **conference not more than thirty (30) days after the date the**  
 11           **department issues the notice of financial responsibility under**  
 12           **section 2 of this chapter.**
- 13           **(b) Except as provided in section 14 of this chapter, an obligor**  
 14           **or obligee who has been served with a notice of financial**  
 15           **responsibility under section 2 of this chapter shall:**
- 16               **(1) appear for the negotiation conference at the date, time,**  
 17               **and location set forth in the notice of financial responsibility;**  
 18               **or**
- 19               **(2) reschedule the negotiation conference with the department**  
 20               **before the date of the negotiation conference as set forth in**  
 21               **the notice of financial responsibility.**
- 22           **(c) The department shall reschedule a negotiation conference as**  
 23           **established in rules adopted by the department under IC 4-22-2.**
- 24           **(d) If a negotiation conference is rescheduled, the department**  
 25           **shall provide notice to the obligor and obligee of the new date and**  
 26           **time of the negotiation conference in the same manner as**  
 27           **prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.**
- 28           **Sec. 4. (a) At a negotiation conference, the department shall**  
 29           **advise each party that the party may:**
- 30               **(1) consult with and be represented by an attorney at the**  
 31               **negotiation conference;**
- 32               **(2) opt out of the negotiation conference and request that the**  
 33               **obligor's child support obligation be determined by a court;**  
 34               **or**
- 35               **(3) consult with and be represented by an attorney and opt**  
 36               **out of the negotiation conference and request that the**  
 37               **obligor's child support obligation be determined by a court.**
- 38           **(b) If a party opts out of the negotiation conference, the**  
 39           **department shall terminate the negotiation conference and notify**  
 40           **the appropriate prosecuting attorney that the party has opted out**  
 41           **of the negotiation conference.**
- 42           **(c) If the parties stipulate to an agreement of a child support**  
 43           **obligation at the negotiation conference, the department shall issue**  
 44           **an order of child support that includes the following:**
- 45               **(1) The amount of the obligor's weekly child support**  
 46               **obligation.**
- 47               **(2) If applicable, the amount of the obligor's child support**  
 48               **arrearage.**
- 49               **(3) Instructions on the manner in which the amount under**  
 50               **subdivision (1) or (2) must be paid.**
- 51               **(4) The name, birth date, and residential and mailing address**

of the:

(A) obligor;

(B) obligee; and

(C) child for whom support is being sought.

(5) Other information as required by state law or as determined by the department.

(d) If the department issues an order under this section, the order may include an order of custody if the parties agree to a custody arrangement.

(e) If the department issues an order under this section, the order shall establish:

(1) parenting time in accordance with the parenting time guidelines adopted by the Indiana supreme court, unless the mother and father agree to an alternative parenting time arrangement; or

(2) if the mother and father agree to an alternative parenting time arrangement, the alternative parenting time arrangement.

(f) If the department issues an order under this section, both parents have the same right to access any records of the child that a parent may access under the law.

(g) The department shall serve an order under this section on the obligor and obligee in the same manner as prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

Sec. 5. (a) Unless a party opts out of a negotiation conference under section 4 of this chapter, if:

(1) the parties do not stipulate to an agreement at the negotiation conference; and

(2) in the absence of an executed paternity affidavit, the obligor contests paternity;

the department shall issue an order for genetic testing of the obligor and continue the negotiation conference to allow for the receipt of the genetic test results.

(b) If the department issues an order for genetic testing under subsection (a), the department:

(1) shall pay the costs associated with the genetic test; and

(2) may recover the costs described under subdivision (1) from the:

(A) alleged father if paternity is established; or

(B) obligee if paternity is not established.

(c) If the:

(1) department orders genetic testing under subsection (a); and

(2) results of the genetic test do not indicate at least a ninety-nine percent (99%) probability that the man is the child's biological father;

the department may dismiss the action or take other appropriate action as allowed by law.

(d) The department shall serve the order for genetic testing to the obligor and obligee in the same manner as prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

1       **Sec. 6. (a) Unless a party opts out of a negotiation conference**  
 2       **under section 4 of this chapter, the department shall issue a**  
 3       **temporary order of child support if:**

4               **(1) the parties do not stipulate to an agreement at the**  
 5               **negotiation conference; and**

6               **(2) one (1) or both of the following apply:**

7                       **(A) The obligor has executed a paternity affidavit.**

8                       **(B) The results of the genetic test indicate at least a**  
 9                       **ninety-nine percent (99%) probability that the man is the**  
 10                      **child's biological father.**

11       **(b) If the department issues a temporary order under subsection**  
 12       **(a), the department shall:**

13               **(1) file information with the clerk of the court as required**  
 14               **under section 15(b)(2) of this chapter; and**

15               **(2) request an administrative hearing with an administrative**  
 16               **law judge.**

17       **(c) The department shall serve the temporary order of child**  
 18       **support to the obligor and obligee in the same manner as**  
 19       **prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.**

20       **Sec. 7. (a) The department shall issue a default order**  
 21       **establishing child support against the obligor if:**

22               **(1) an obligor fails to:**

23                       **(A) appear for the negotiation conference at the time and**  
 24                       **location set forth in the notice of financial responsibility;**  
 25                       **or**

26                       **(B) reschedule the negotiation conference with the**  
 27                       **department before the date of the negotiation conference**  
 28                       **as set forth in the notice of financial responsibility; and**

29               **(2) one (1) or more of the following apply:**

30                       **(A) The obligor has executed a paternity affidavit.**

31                       **(B) The results of the genetic test indicate at least a**  
 32                       **ninety-nine percent (99%) probability that the man is the**  
 33                       **child's biological father.**

34       **(b) If, in an action to establish paternity and a child support**  
 35       **obligation:**

36               **(1) the obligor fails to:**

37                       **(A) appear for the negotiation conference at the time and**  
 38                       **location set forth in the notice of financial responsibility;**  
 39                       **or**

40                       **(B) reschedule the negotiation conference with the**  
 41                       **department before the date of the negotiation conference**  
 42                       **as set forth in the notice of financial responsibility; or**

43               **(2) unless a party opts out of a negotiation conference under**  
 44               **section 4 of this chapter, the obligor fails to:**

45                       **(A) take a genetic test as ordered by the department; or**

46                       **(B) appear for an appointment to take a genetic test**  
 47                       **without good cause;**

48       **the department shall issue a default order of paternity and child**  
 49       **support.**

50       **(c) A default order issued under subsection (a) or (b) must**  
 51       **include the following:**

1 (1) The amount of the obligor's weekly child support  
2 obligation.

3 (2) If applicable, the amount of the obligor's child support  
4 arrearage.

5 (3) Instructions on the manner in which the amount under  
6 subdivision (1) or (2) must be paid.

7 (4) The following:

8 (A) Name of the obligee.

9 (B) Name and birth date of the child for whom support is  
10 being sought.

11 (5) For a default order establishing paternity, a statement that  
12 the obligor has been determined to be the child's legal father.

13 (6) Other information as required by state law or as  
14 determined by the department.

15 (d) The department shall serve a default order issued under this  
16 section to the obligor and obligee in the same manner as prescribed  
17 under Rule 4.1 of the Indiana Rules of Trial Procedure.

18 (e) If the department enters a default order under this section,  
19 the department, obligor, or obligee may request an administrative  
20 hearing on the default order as established in rules adopted by the  
21 department under IC 4-22-2.

22 Sec. 8. (a) Upon request by the department, an obligor, or an  
23 obligee under section 7(e) of this chapter, the department shall  
24 assign an administrative law judge to hold an administrative  
25 hearing on the issue of paternity, if applicable, and child support.

26 (b) The department shall send notice of the administrative  
27 hearing to the obligor and obligee in the same manner as  
28 prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

29 Sec. 9. (a) An administrative law judge may not issue a decision  
30 as to the validity of a pre-existing court order. However, the  
31 department or an administrative law judge may review and adjust  
32 an existing child support order in accordance with:

33 (1) the child support guidelines; and

34 (2) state law.

35 (b) An administrative law judge shall determine the matter of  
36 paternity, if applicable, and child support de novo.

37 (c) An administrative law judge shall include written findings  
38 and conclusions in an order issued by the administrative law judge  
39 under this chapter.

40 (d) An order issued by an administrative law judge shall be  
41 served upon the obligor and obligee in the same manner as  
42 prescribed under Rule 4.1 of the Indiana Rules of Trial Procedure.

43 Sec. 10. (a) The department or an administrative law judge shall  
44 determine the amount of a child support obligation under this  
45 chapter by applying the child support guidelines.

46 (b) The department or an administrative law judge may issue an  
47 administrative subpoena requesting:

48 (1) income information; or

49 (2) other information relevant for establishing and enforcing  
50 an order for child support.

51 Sec. 11. (a) If a paternity affidavit is executed under

1 IC 16-37-2-2.1, the:

- 2 (1) mother has sole legal custody of the child; and
- 3 (2) father has reasonable parenting time rights in accordance
- 4 with the parenting time guidelines adopted by the Indiana
- 5 supreme court;

6 unless another custody or parenting time determination is made by  
7 a court under IC 31-14.

8 (b) If a genetic test is requested after the execution of a  
9 paternity affidavit and granted by a court under state law, a court  
10 shall order that the genetic test be paid:

- 11 (1) from the county general fund of the county in which the
- 12 child support proceeding occurs; or
- 13 (2) by the party who requested the genetic test.

14 (c) The county shall pay an order issued under subsection (b)(1)  
15 without an appropriation.

16 Sec. 12. (a) An obligor or obligee may file a written request with  
17 the department for the review and adjustment of:

- 18 (1) a court order for child support; or
- 19 (2) an order for child support issued under this chapter.

20 (b) The department, not later than sixty (60) days after receipt  
21 of a request for review and adjustment of child support under this  
22 section, shall:

- 23 (1) if the department objects to the request for review and
- 24 adjustment of child support because the request fails to meet
- 25 the requirements under IC 31-16-8-1 or the child support
- 26 guidelines, notify the requesting party that the request has
- 27 been denied and advise the party of the party's right to
- 28 request an administrative hearing; or
- 29 (2) if the department does not object to the party's request,
- 30 issue a notice of review and adjustment of child support.

31 (c) If a party requests an administrative hearing under this  
32 section, the administrative law judge shall:

- 33 (1) hold an administrative hearing not later than sixty (60)
- 34 days after the administrative law judge receives the request;
- 35 and
- 36 (2) determine only the issue of adjustment of child support.

37 (d) The department shall serve the obligor and obligee with a  
38 notice of review and adjustment of child support in the same  
39 manner as prescribed under Rule 4.1 of the Indiana Rules of Trial  
40 Procedure.

41 (e) A request for review and adjustment of child support shall  
42 not stay an order for child support issued by the department under  
43 this chapter.

44 Sec. 13. (a) A party may seek judicial review of an order by an  
45 administrative law judge under this chapter not later than fifteen  
46 (15) calendar days after the postmark date on the order issued by  
47 the administrative law judge.

48 (b) A party may seek judicial review of an order issued under  
49 section 4 of this chapter establishing custody of a child and  
50 parenting time.

51 (c) The clerk of the court shall send a notice of an appeal under



1 this section that includes the date and time of the hearing to the:

- 2 (1) appellant;
- 3 (2) appellee;
- 4 (3) department; and
- 5 (4) Title IV-D prosecuting attorney in the county in which the
- 6 appeal was filed.

7 (d) A court shall hear an appeal under this section de novo.

8 Sec. 14. (a) If the department is acting at the request of another  
9 state's child support agency, a nonresident obligee is not required  
10 to appear at a negotiation conference or an administrative hearing  
11 under this chapter.

12 (b) The department may:

- 13 (1) take evidence related to a child support obligation from a
- 14 nonresident obligee by telephone deposition or by affidavit;
- 15 and
- 16 (2) present the evidence at a negotiation conference or an
- 17 administrative hearing under this chapter.

18 Sec. 15. (a) The department shall file the information described  
19 in subsection (b) with the following:

- 20 (1) The clerk of the court in which an action relating to child
- 21 support for a child is pending.
- 22 (2) If there is not an action relating to child support for a child
- 23 pending in a court, the clerk of the court in the county in
- 24 which the notice of financial responsibility under section 2 of
- 25 this chapter was issued.

26 (b) The department shall file the following with a clerk of the  
27 court described under subsection (a):

- 28 (1) If the department issues an order of child support under
- 29 section 4 of this chapter, the following:
- 30 (A) A copy of the order.
- 31 (B) A copy of one (1) of the following:
- 32 (i) An executed paternity affidavit.
- 33 (ii) A genetic test.
- 34 (2) If the department issues a temporary order under section
- 35 6 of this chapter, a copy of the temporary order.
- 36 (3) If the department issues a default order under section 7 of
- 37 this chapter, the following:
- 38 (A) A copy of the default order.
- 39 (B) If applicable, a copy of the:
- 40 (i) paternity affidavit; or
- 41 (ii) result of the genetic test.
- 42 (4) If an administrative law judge issues an order establishing
- 43 paternity and child support under section 9 of this chapter,
- 44 the following:
- 45 (A) A copy of the order establishing paternity and child
- 46 support.
- 47 (B) The:
- 48 (i) paternity affidavit; or
- 49 (ii) if applicable, genetic test results.

50 (c) The clerk shall:

- 51 (1) stamp the date of receipt of a copy of an order establishing

1           paternity, if applicable, and child support under this chapter;  
 2           and  
 3           (2) assign the order described under subdivision (1) with a  
 4           cause number.

5           (d) An order of paternity or child support, or both, filed under  
 6           this section has all the force, effect, and remedies of an order of the  
 7           court.

8           **Sec. 16. The department shall adopt rules under IC 4-22-2 to**  
 9           **administer this chapter.**

10          SECTION 15. IC 31-28-5 IS ADDED TO THE INDIANA CODE  
 11          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 12          JULY 1, 2008]:

13          **Chapter 5. Foster Care Sibling Visitation**

14          **Sec. 1. This chapter applies to:**

- 15           (1) a child who receives foster care that is funded by the  
 16           department or a county office; and  
 17           (2) a sibling of a child described in subdivision (1).

18          **Sec. 2. The department shall make reasonable efforts to promote**  
 19          **sibling visitation for every child who receives foster care, including**  
 20          **visitation when one (1) sibling receives foster care and another**  
 21          **sibling does not.**

22          **Sec. 3. A child, a child's foster parent, a child's guardian ad**  
 23          **litem, a court appointed special advocate, or an agency that has the**  
 24          **legal responsibility or authorization to care for, treat, or supervise**  
 25          **a child may request the department to permit the child to have**  
 26          **visitation with the child's sibling if the child or the child's sibling,**  
 27          **or both, receive foster care. If the department finds that the sibling**  
 28          **visitation is in the best interests of each child who receives foster**  
 29          **care, the department shall permit the sibling visitation and**  
 30          **establish a sibling visitation schedule.**

31          **Sec. 4. (a) If the department denies a request for sibling**  
 32          **visitation under section 3 of this chapter, the child's guardian ad**  
 33          **litem or court appointed special advocate may petition the juvenile**  
 34          **court with jurisdiction in the county in which the child receiving**  
 35          **foster care is located for an order requiring sibling visitation.**

36           (b) If the juvenile court determines it is in the best interests of  
 37           the child receiving foster care to have sibling visitation, the juvenile  
 38           court shall order sibling visitation and establish a schedule for the  
 39           sibling visitation.

40          **Sec. 5. (a) The juvenile court may appoint a guardian ad litem**  
 41          **or court appointed special advocate if a child receiving foster care**  
 42          **requests sibling visitation.**

43           (b) The provisions of IC 31-17-6 apply to a guardian ad litem or  
 44           court appointed special advocate appointed under this section.

45          SECTION 16. [EFFECTIVE UPON PASSAGE] (a)  
 46          Notwithstanding IC 31-25-5, as added by this act, the department  
 47          of child services shall adopt rules to administer IC 31-25-5.

48           (b) This SECTION expires July 1, 2009.

49          SECTION 17. [EFFECTIVE JANUARY 1, 2009] (a) As used in  
 50          this SECTION, "department" refers to the department of child  
 51          services.

1       **(b) The department and the prosecuting attorneys council of**  
2 **Indiana shall compare performance measures, including paternity**  
3 **establishment, child support establishment, child support**  
4 **collections, and child support arrearage collections, between the**  
5 **counties selected to participate in the pilot program under**  
6 **IC 31-25-5-1, as added by this act, and the county selected to**  
7 **administer child support laws in the same manner in which the**  
8 **county administered the child support laws before January 1, 2009,**  
9 **under IC 31-25-5-1(c), as added by this act.**

10       **(c) The department and the prosecuting attorneys council of**  
11 **Indiana shall submit a report to the Indiana child custody and**  
12 **support advisory committee (established by IC 33-24-11-1) before**  
13 **January 1, 2011, that includes the results of the pilot program and**  
14 **the department's findings and recommendations concerning the**  
15 **performance measure comparison between the counties described**  
16 **in subsection (b).**

17       **(d) This SECTION expires July 1, 2011.**

18       **SECTION 18. An emergency is declared for this act.**

      (Reference is to ESB 91 as printed February 15, 2008.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 91**

**S**igned by:

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Senator Delph  
Chairperson

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Representative Avery

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Senator Skinner

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Representative Knollman

**Senate Conferees**

**House Conferees**